

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
CASSAVA SCIENCES, INC., : Docket # 1:22-cv-09409-
Plaintiff, : GHW-OTW
- against - :
BREDT et al, : New York, New York
Defendant. : March 8, 2023
----- : INITIAL CASE
----- : MANAGEMENT CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE ONA T. WANG,
UNITED STATES MAGISTRATE JUDGE

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None

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None

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2 THE CLERK: This is 22-civil-9409, Cassava
3 Sciences, Inc. v. Bredt et al, before the Honorable Ona T.
4 Wang.

5 Please state your appearances for the record.

6 MR. ERIK CONNOLLY: This is Erik Connolly and Tim
7 Frey on behalf of Cassava Sciences.

8 HONORABLE ONA T. WANG (THE COURT): All right,
9 good morning.

10 MR. JOSHUA KALLMAN BROMBERG: Joshua Kallman
11 Bromberg of Kleinberg, Kaplan, Wolff & Cohen, P.C. on
12 behalf of defendant, Quintessential Capital Management LLC.
13 And I'm joined by my colleague, David Levy.

14 MS. MEGHAN K. SPILLANE: Good morning, your Honor.
15 Meghan Spillane from Goodwin Procter on behalf of Dr. Bredt
16 and Dr. Pitt.

17 MR. DAVID ROBERT SHINE KUMAGAI: Good morning, your
18 Honor. David Robert Shine Kumagai on behalf of Jesse Brodkin
19 and Enea Milioris and Adrian Heilbut. And with me is Isaac
20 Zaur and Dan Wachtell.

21 THE COURT: Okay. This is a little more
22 complicated than some of my typical Initial Case Management
23 Conferences. So I understand, I think, plaintiff's claims.
24 But why don't I just get a brief overview. And then with
25 defense counsel, everybody will get a chance to speak. I

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2 just want to understand who the defendants are and how they
3 fit in with each other.

4 The other thing I'm going to ask plaintiff's
5 counsel to do is to talk to me a little bit about what the
6 status is of any regulatory or criminal investigations, to
7 the extent you know.

8 MR. CONNOLLY: Okay. Thank you very --

9 THE COURT: And can disclose -- I'm sorry.

10 MR. CONNOLLY: And can disclose. Thank you very
11 much. I appreciate that, your Honor. So I will try to
12 describe the factual background but not in an aggressive or
13 colorful way. The allegations here center around a company
14 called Cassava Sciences. It's a biotechnology company, and
15 they are developing a drug they hope is successful in
16 treating Alzheimer's disease. They have gone through a
17 series of tests already --

18 THE COURT: And what's the -- I'm sorry -- I
19 should know this, because I've seen it, but I can't recall
20 the name of the drug off the top of my head.

21 MR. CONNOLLY: Simufilam.

22 MR. TIMOTHY FREY: Your Honor, it's S-i-m-u-f-i-
23 l-a-m.

24 MR. CONNOLLY: So they went through a series of
25 the mandatory testings and have now been approved by the

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2 FDA for what's called the third-phase testing, which is the
3 last set of tests that you do before you go to market with
4 the drug.

5 What Cassava has alleged is that each of these
6 group of defendants published defamatory information about
7 them in order to make money from a decline in the company's
8 equity price. So each of the defendants are alleged to be
9 short sellers of Cassava's equity. And the way that the
10 short sellers can make money is if the equity price goes
11 down. And so what Cassava has alleged against each group
12 is that at different times and in different publications
13 they each made some fraudulent statements about Cassava.

14 Cassava's perspective on it is that the statements
15 that they made were essentially defamation per se because
16 they were accusing the company of being a fraud and
17 fabricating data. Fabrication of data is a crime,
18 particularly when it's associated with regulatory issues or
19 securities issues. And so, from Cassava's perspective,
20 they think the case is a case of defamation per se against
21 each of the defendants for their publications for accusing
22 them of being a fraud and accusing them of committing a
23 crime of fabricating data. That is the allegation.

24 The defendants have multiple publications that
25 they've done. There are what we've called the citizens

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2 petition defendants, which are Drs. Bredt and Pitt, who --

3 THE COURT: Okay, slow down.

4 MR. CONNOLLY: I apologize. I apologize.

5 THE COURT: Drs. Bredt and Pitt.

6 MR. CONNOLLY: Correct. They published what is

7 alleged to be the defamatory material in what's called

8 Citizen's Petitions to a regulatory body and then in some

9 supplements to those, as well. The other defendant, QCM,

10 Quintessential Capital Management, published the allegedly

11 defamatory materials in a report that they posted on their

12 website and then in some social media postings, as well.

13 There is a dispute over whether or not the company QCM is

14 accountable for the social media posts by their founder.

15 So that is a contested issue, but obviously, Cassava has

16 alleged that they are.

17 THE COURT: And the founder is whom?

18 MR. CONNOLLY: Grego, Mr. Grego.

19 THE COURT: And he is or is not a defendant?

20 MR. CONNOLLY: He is not a personal defendant.

21 THE COURT: Okay.

22 MR. CONNOLLY: And then the last group, which

23 we've called the dot-com defendants, is a collection of,

24 currently before the Court, three defendants that also

25 published a series of reports and a PowerPoint presentation

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2 and social media post making similar accusations regarding
3 Cassava being a fraud and Cassava fabricating data.

4 So we have for each set of the defendants what I
5 would call one main -- one or two main publications and
6 then for some of the defendants we've got social media
7 postings, as well, not for each of the defendants.

8 I hope that wasn't too colored. I felt like that
9 was pretty neutral.

10 THE COURT: Okay. so then talk to me about the
11 regulatory and criminal investigations, then.

12 MR. CONNOLLY: So what Cassava can say about that
13 is those investigations from Cassava's perspective were
14 triggered as a result of the defamatory statements made by
15 these defendants and that there is no basis to any of
16 those. Nothing has been formally brought against them, and
17 so from Cassava's position, that will amount to nothing.
18 But then Cassava came under the scrutiny because of the
19 defamatory publications of these defendants. I'm certain
20 the defendants disagree with that, but from the Cassava
21 perspective that is the origin story for those, as well.
22 But at this point I can tell you there has been nothing
23 formally announced.

24 THE COURT: Okay, which or where were the
25 investigations, or is that something you can't disclose?

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MR. CONNOLLY: I cannot disclose any of that information.

4

THE COURT: And you cannot -- can you disclose if they're closed?

6

MR. CONNOLLY: I actually don't think I am allowed to say that one way or the other. I believe with most investigations, until there's a formal announcement by the agency, I am prohibited from making any statement. And that would be a violation of Cassava's interactions with any agency.

12

THE COURT: Well, that seems like it might be an important trigger point as far as proving truth or not, no?

14

MR. CONNOLLY: No, not at all, actually.

15

THE COURT: Would it be material to truth?

16

MR. CONNOLLY: We don't think so at all. The investments will run the course that they are going to run. Obviously, I have other clients that I deal with that are investigated, and I have civil proceedings that continue. The issue, what this case really comes down to is whether or not Cassava is a fraud, as alleged by the defendants, or did Cassava fabricate its data. Those are historical events. Cassava can readily establish that neither of those things are true. And from Cassava's perspective with that proof, falsity is established, and the focal point of

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2 the case becomes, as it does in most defamation cases,
3 actual malice, if I have to satisfy that standard, which I
4 don't concede I do.

5 THE COURT: Okay. I mean, I guess in reading
6 between the lines, and maybe anticipating what some of
7 defense counsel might say is well, there's been no formal
8 charges yet -- with "yet" being the operative word. But,
9 be that as it may, I guess if the process hasn't run its
10 course, the process hasn't run its course, and we don't
11 know one way or the other, right?

12 MR. CONNOLLY: You don't know one way or the
13 other, which --

14 THE COURT: Okay.

15 MR. CONNOLLY: -- is why Court's typically don't
16 look at the potential of I'll call "sister" investigations
17 as a factor of whether or not you can initiate your civil
18 litigation. I get to start my civil litigation, I get --

19 THE COURT: Oh, yes.

20 MR. CONNOLLY: -- to start my discovery. If that
21 happens, certainly -- and, certainly if something like that
22 happens, we could all be back here in a very different
23 posture. But, at the same token, I with some certainty --
24 I'm not a defense attorney here -- but if those don't
25 result in any indictments or any filings, I doubt the

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2 defendants are going to say, "But we'll stipulate to
3 falsity, then, because it didn't run its course." So --

4 THE COURT: Well, I wasn't sort of talking about
5 merits in the end or of the, you know, of anything being
6 necessarily dispositive of an element yet, with "yet" being
7 the obvious word, with "yet" being actually a very
8 important word. I mean, when I was in private practice and
9 often on the defense side but sometimes on the plaintiff's
10 side, if there were parallel proceedings -- I won't gender
11 them -- but if there were parallel proceedings, either
12 regulatory or criminal, we would sometimes be asked to put
13 the brakes on in the civil proceeding, so -- which, of
14 course, brings us to the motion to stay but which I will
15 put that to the side because I do want to hear from the
16 defendants, the defendant groups and, you know, to the
17 extent you can, talk to me about how this even came up,
18 meaning, you know, how were these statements made. I'm
19 assuming or I would hope that, you know, what would come
20 out in discovery, if discovery were to proceed, would be
21 that, you know, the defendant had some reason other than or
22 had some indication or suggestion other than just making it
23 up in their heads to say what they said. Like I said, I'm
24 not asking for major disclosures; but, again, to the extent
25 that some of this might be helpful, it might also be

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2 helpful for me to understand the motion to stay and where
3 it falls and, you know, where the various factors fall.

4 So anybody can start.

5 MR. BROMBERG: Good morning, your Honor. Joshua
6 Bromberg again on behalf of Quintessential Capital
7 Management. Without going too deeply into the merits,
8 which are I think set forth in our motion to dismiss, we
9 think this is a garden-variety SLAPP suit, and it's been
10 filed by Cassava as retaliation against the multitude of
11 different defendants for public statements made on the
12 subject of a topic of very important public interest,
13 namely the testing and the science behind this new
14 Alzheimer's drug.

15 Our position has been, again as stated in our
16 motion to dismiss, that these statements not only were
17 substantially true but they were opinions or otherwise not
18 defamatory. They were not made with actual malice, as
19 Cassava is required to prove here, either under
20 longstanding First Amendment case law or under the New York
21 anti-SLAPP statute. And, finally, none of the statements
22 made by the defendants can be shown to have caused any
23 damages to Cassava as a matter of law. Those are the
24 defenses that are common, as I understand it, to all of the
25 defendants. And there are various individualized defenses

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2 that have also been asserted.

3 I will hold off on explaining to your Honor why we
4 think the discovery stay is appropriate unless --

5 THE COURT: Yes, why don't you hold off for now.

6 So QCM on its own published -- let's see, published
7 materials in a QCM-issued report on its website, and the
8 founder also said some things in a social media post?

9 MR. BROMBERG: Correct, your Honor. There was a
10 report published on QCM's website, and subsequently there
11 were a number of Twitter posts made by Gabriel Grego, who
12 is the principal of QCM. The reason for these, of course,
13 we concede that our client is a short seller, but what was
14 not mentioned in the Complaint -- obviously, this is
15 outside the record and will eventually be -- will be
16 uncovered in discovery, if we get that far. We don't think
17 that's appropriate, but Quintessential Capital Management
18 has a very long track record of uncovering corporate fraud
19 and has as virtually unblemished record in that regard.

20 THE COURT: All right, next?

21 MS. SPILLANE: Your Honor, as I stated previously,
22 I represent Dr. Bredt and Dr. Pitt, who are two
23 neuroscientists who submitted a series of publications
24 before the FDA. Significantly, the first of their
25 Citizen's Petitions before the FDA, which included a 39-

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2 page Statement of Concern, was submitted on August 18th of
3 2021. They then submitted four subsequent times, on
4 August 30th, on September 9th, on November 17th, and
5 finally on December 8th. They had enlisted a law firm to
6 submit these Citizen's Petitions on their behalf. In them,
7 consistent with what you heard from my colleague, they
8 evidenced anomalies in the data and apparent errors in the
9 data that gave them serious concerns that it was possible
10 that the data had been manipulated.

11 As you will see from our motion, which is fully
12 submitted, everything they said in the reports is backed up
13 with publicly available data that they attached, much of
14 which was actually annexed to the Complaint itself.

15 And, significantly, your Honor, while the first
16 publication was on August 18th -- of course, the Complaint
17 was not filed until November 2nd of 2022, which was over a
18 year later, and the identities of Dr. Bredt and Dr. Pitt
19 were known as of November 17, 2021. So not only was the
20 first publication of the Citizen's Petitions long before
21 the one-year statute of limitations, but the identity of
22 both doctors were known well before the filing.

23 So our motion to dismiss papers have been fully
24 submitted, and we echo many of the defenses that have
25 already been raised. But one that is particular to my

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2 clients is, of course, a statute of limitations defense
3 based on the first-publication rule.

4 THE COURT: Okay.

5 MR. KUMAGAI: Your Honor, David Kumagai on behalf
6 of the dot-com defendants, Brodkin, Milioris and Heilbut.
7 So our motion to dismiss is going to be filed tomorrow and
8 then fully briefed by May 5th. And, broadly, there are
9 many of the same arguments you heard from the other
10 defendants; but there are two general aspects of our
11 motion. The first is that we're moving under Rule 12(b) (2)
12 for lack of personal jurisdiction over defendants Brodkin
13 and Milioris. Both defendants are out of state; there's no
14 allegation either of them ever set foot in New York in
15 connection with these challenged statements. And plaintiff
16 Cassava is also out of state; they're a Delaware company
17 based in Texas. So that will be as to two of the dot-com
18 defendants, Brodkin and Milioris.

19 And then, second, we're moving under 12(b) (6) to
20 dismiss claims against all three of our clients, Brodkin,
21 Milioris and Heilbut. And the arguments are broadly
22 consistent with the arguments from the other defendants.
23 And as you'll see in our motion, your Honor, we are
24 especially focused on the context of this case, which
25 really is under the case law important, critically

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2 important to keep in mind when evaluating these allegedly
3 defamatory statements. So all of the challenged statements
4 were made within this context of a very public, very
5 intense scientific debate over Alzheimer's research
6 generally and Cassava's drug Simufilam, in particular. And
7 it really is a novel area of scientific debate. And the
8 Second Circuit in the *Ony* case from 2013 has very strongly
9 cautioned Courts against trying to referee these types of
10 debates involving novel scientific claims.

11 So we'll argue that the defamation claims fail for
12 three reasons. First, Cassava cannot plead falsity. And
13 really, to answer your earlier question, your Honor, about
14 what the impetus for these statements was, it's all based
15 on publicly available data, including -- from Cassava,
16 including the CEO admitting errors in the research, both
17 their clinical studies and underlying research papers. And
18 those are the errors that defendants have all been calling
19 out in their statements and, you know, drawing the
20 conclusion and expressing the opinion that they are signs
21 of possible data manipulation. There's also been seven
22 scientific journals retracting or correcting articles
23 published by Cassava's lead researcher for its drug, and
24 these are --

25 THE COURT: Did you say several or seven?

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MR. KUMAGAI: Seven.

3

THE COURT: Seven. Okay, what journals were they?

4

MR. KUMAGAI: So the first one is *Plus One*. The second is *Alzheimer's Research in Therapy*. The third is *Molecular Nerve Degeneration*. The fourth is *Neuroscience*. The fifth is *The Journal of Neuroscience*. The sixth is *Neurobiology of Aging*. And the seventh is *Physiology and Behavior*. And we'll cite those in our motion to dismiss tomorrow.

11

THE COURT: Are they all peer-reviewed journals?

12

MR. KUMAGAI: Your Honor, I believe so, but I can't confirm.

14

THE COURT: Okay. Are there -- and this might be a question for Cassava counsel, for plaintiff's counsel -- are there continuing to be statements or reports or coverage of this drug and these issues along the lines of -- I saw a mention in the 26(f) report that Cassava may need to amend its Complaint?

20

MR. CONNOLLY: This group of defendants, some of these defendants, have continued to publish defendant statements about Cassava since the filing of the Complaint. So there is some ongoing defamation that has taken place since the filing of the Complaint. The Court will have to evaluate the amendment of the Complaint to encompass those

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2 at a future date and time. Typically the way that works
3 for the defamation cases is if the new defamatory
4 statements are of the same ilk, same nature as the existing
5 ones. You can amend it, and you can bring it back in at a
6 subsequent date due to a lack of bias to the defendant.
7 But that's the typical evaluation that we do.

8 THE COURT: Okay. All right, and I see that there
9 is at least one defendant who needs to be served in
10 Germany, still.

11 MR. CONNOLLY: Yes. So --

12 THE COURT: Who's that defendant?

13 MR. CONNOLLY: Mr. Markey. Mr. Markey would be
14 part of the dot.com defendant group, or at least that's the
15 naming that we have used for convenience's sake. His
16 counsel in good faith was, I believe, working to determine
17 whether or not they would accept service. Once they
18 indicated to us that Mr. Markey would not be accepting
19 service through counsel, we initiated the proceedings to
20 serve it in the Hague. The documentation is with Germany
21 now, and that will play out however that typically will
22 play out. And I'm sure your Honor knows that that can take
23 anywhere from a few months to a long time. And if I
24 ultimately have to amend my roster to address that, I'll
25 amend my roster to address that. We'll see what happens

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2 there.

3 THE COURT: Okay, so what you're calling the
4 Citizen's Petition groups are scientists, are Ph.D.'s who
5 can and did apparently review the data, review the peer
6 review journals. Are there any other scientist defendants
7 in the other two defendants groups, or are they investors?

8 MR. CONNOLLY: Yes, your Honor. The dot.com
9 defendants all have Ph.D.'s and are scientists, as well.

10 THE COURT: And so Mr. Markey should actually be
11 Dr. Markey?

12 MR. CONNOLLY: I apologize, yes. I believe
13 Mr. Markey is a Dr. Markey. I apologize. Then, that
14 means --

15 THE COURT: Yes, because, I mean, this case -- I
16 mean, one should say that in all circumstances, that
17 matters; but in this case, it definitely matters.

18 MR. CONNOLLY: I absolutely respect that.
19 Cassava's allegations in that regard is their status as
20 doctors actually demonstrates the actual malice that we
21 would not necessarily have in other circumstances. And so
22 I certainly apologize. I did not mean --

23 THE COURT: Wait, so I'm trying to understand why
24 if their status as Ph.D.'s would actually demonstrate
25 actual malice; I'm just trying to understand that.

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2 MR. CONNOLLY: There is a section in our Complaint
3 that discusses common knowledge in the scientific
4 community. It is at page 135. It begins at paragraph 316
5 and continues through to paragraph 330. And this is one of
6 the -- I believe we have 50 or 60 paragraphs discussing the
7 actual malice of these defendants. One of the primary
8 reasons why their status as doctors bolsters the claim for
9 actual malice is because they had knowledge that what they
10 were calling anomalies or what they were calling
11 irregularities were not indicia of fraud and were not
12 indicia of fabrication. There is a potential that if I
13 look at something with no scientific training whatsoever, I
14 could say that seems like maybe that's fraud. But if
15 you're a doctor and you actually study it, you know it's
16 not.

17 And so one of the issues here is that that, in
18 conjunction with all the other evidence, indicates that,
19 well, you can say that something might be an anomaly; what
20 the Court's don't let you do and what is an entirely
21 different nature of defamation is claiming that something
22 is a fraud or fabricated. There's a clear demarcation in
23 the law on those two things. And from Cassava's
24 perspective, the reason they brought the case, is that it
25 crossed that line.

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2 THE COURT: So, I mean, the law may have a clear
3 demarcation, but my concern would be whether -- and, you
4 know, I'm just speaking -- you know, I have not done a deep
5 dive into this, I've not done a deep dive into the law, for
6 sure; but is it possible that there's something in between
7 fabrication and fraud and perfectly fine data that just has
8 anomalies that could be what, when I was a scientist, would
9 have called sloppy science, right, that there is -- you
10 know, the controls that are in place -- and I don't mean
11 just your control group -- but controls and guardrails
12 around the research and the procedures that are in place
13 are not -- that they could be indicative that those actual
14 procedures weren't always followed. And that could be --
15 to use a discovery and spoliation analogy, it could be one
16 of those things where it's like somebody didn't destroy the
17 documents intentionally, I mean, the act was intentional
18 that they were destroyed but it was just inattention,
19 negligence, failure -- lack of care around a certain set of
20 procedures. I'm not saying that that happened with
21 Cassava; I'm just saying that this -- you know, I'm -- I
22 question -- and I guess it might come down to what the
23 actual anomalies are -- whether certain defendants having a
24 deeper background and a scientific background actually cuts
25 one way or the other.

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2 MR. CONNOLLY: Sure. And I would give three
3 responses to that, if you allow me --

4 THE COURT: Yes, go ahead.

5 MR. CONNOLLY: -- and I'll keep it brief,
6 obviously. The first is what is alleged in the Complaint
7 does not fall into the category of the gray area, as you
8 have described it. Cassava alleges in the Complaint, in
9 pretty excruciating detail, that that is not the case here,
10 and it's all factual allegations. The second thing I would
11 say is the gray area that you were discussing, that concept
12 absolutely would end up, I expect, to be one of the hotly
13 contested disputed issues of fact between the parties that,
14 until we complete discovery -- and ultimately, the trier of
15 fact would have to make a call on that -- but I do think
16 you are correct in identifying something that once we get
17 into the facts and we're not looking at the allegations,
18 that's going to be hotly contested by the parties.

19 THE COURT: All right.

20 MR. CONNOLLY: And, briefly, your Honor, I'll just
21 make one other reference. I know some journal articles
22 were cited by the dot.com defendants. I would direct the
23 Court's attention to paragraph 30 of the Complaint, which
24 are the journal articles that at one point may have
25 partially retracted and then flipped and said no, we see no

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2 evidence of fraud here. And those are listed out in
3 paragraph 30 of the Complaint for you -- I'm sorry-- 300,
4 paragraph 300 -- too many zeros.

5 THE COURT: What a difference a zero makes.

6 MR. CONNOLLY: I know, I know. I don't know the
7 last time I had a Complaint that wasn't over 100 pages. So
8 this is --

9 THE COURT: I'll tell you that when we first --
10 when I was in private practice, I spent a lot of time
11 working with the Madoff trustee in asset recovery. And
12 when we were trying to figure out what various customers'
13 purported losses were, I would read them and by like, "Oh,
14 wow, they claim they lost \$5 million -- oh, no, wait, I
15 missed three zeros, I miscounted the commas and zeros."

16 So, let's look at the motion to stay. I don't
17 really want to have full-blown argument -- oh, actually,
18 before I do this -- I might have missed this in the Case
19 Management Plan -- have you exchanged your initial
20 disclosures yet? Yes.

21 MR. CONNOLLY: We did, we did.

22 THE COURT: All right. In light of all the other
23 things going on in this case, my leaning had been and has
24 been, continues to be to stay discovery for a period of
25 time. But I am willing to hear you out on why you think

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2 that's not a good idea.

3 MR. CONNOLLY: Thank you, your Honor. I think I
4 would focus here on burden, and I'd focus on prejudice,
5 because I think the initial disclosures, which I'm happy to
6 give your Honor copies of the --

7 THE COURT: No, I don't want to see them.

8 MR. CONNOLLY: But the -- I know you want more
9 paperwork.

10 THE COURT: No, I don't.

11 MR. CONNOLLY: The initial disclosures demonstrate
12 that there's actually no burden here and that the prejudice
13 would be significant. So on burden, which is obviously the
14 defendant's need to establish that the discovery is going
15 to be oppressive and burdensome to them, we have not
16 exchanged any interrogatories or requests for production,
17 so none of that is out the door yet. And so no one can
18 actually say it's going to be burdensome. And the one data
19 point we do have on burden has to do with the
20 identification that the parties have made of individuals
21 with knowledge because those will be the custodians from
22 whom this group of defendants would have to gather
23 documents. Drs. Bredt and Pitt have only identified two
24 people with relevant knowledge, themselves, in terms of
25 things that they would have to collect documents from. QCM

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2 has identified one person, their principal, as the only
3 person with relevant knowledge; and so, therefore, you're
4 talking about collecting documents from one person. The
5 dot.com defendants didn't identify themselves at all as
6 having release knowledge, but I'm going to assume that they
7 do. And so that's three people.

8 THE COURT: Okay. Let me stop you right there.

9 MR. CONNOLLY: Yes.

10 THE COURT: I was actually thinking more about
11 Cassava's witnesses. If there are parallel proceedings
12 which cannot be disclosed, why are we not -- why would we
13 end up in -- why would we put defendants through having to
14 either seek documents or depositions or other disclosures?
15 What do you do with a document request that says produce
16 everything that has been provided to a regulatory or
17 investigative agency; identify every single meeting you
18 have had with any regulatory or investigative or criminal
19 agency; let's depose somebody and have them take the Fifth
20 multiple times until something is closed; why do we want to
21 do that?

22 MR. CONNOLLY: First, you're presupposing
23 something that is not accurate. I have not asserted the
24 Fifth Amendment. And so you're claiming that my clients
25 are --

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2 THE COURT: I know. But what I am saying -- I am
3 telling you this from my experience, both managing cases
4 that have parallel proceedings for the last several years,
5 as well as in my experience as a private practitioner
6 working at the intersection of bankruptcy, criminal, SEC
7 and civil proceedings. So I am asking you how do you
8 respond to that, if your client gets document responses,
9 requests for deposition, interrogatories that seek that
10 information, the same information that you just said
11 earlier you are not at liberty to disclose?

12 MR. CONNOLLY: So there is a fine distinction
13 there, your Honor. So if you're asking me for the
14 documents that have been provided to regulatory
15 authorities, I absolutely can provide that information.
16 That's going to be part of my document production already.
17 If you're asking me for things that went to a DOJ, I'm
18 absolutely giving you that already because I'm providing
19 it, anyways, as part of my regular production. So the
20 only -- I'm trying to think if there's any category of
21 document request that I'm going to get hit with that I
22 would have to assert anything that would prevent it from
23 being disclosed. And I can't think of in this context
24 anything.

25 And if there's concern about the regulatory

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2 proceedings and the status of it are so gave, then I am
3 happy to go back to my client and I'm happy to go back to
4 the attorneys who are handling that directly to find out if
5 I can give you a better update with respect to it. But
6 right now, sitting here, I see no reason why I'm holding
7 back anything from my production based upon those parallel
8 proceedings. I just don't see it. And so it's speculative
9 that I might have it. And if we have to wrestle with it
10 and there is of 25 RFPs one that I have to go back and
11 discuss with the Court, well, that's the exact same thing
12 we do whenever we have an RFP that might have some
13 disagreement over an attorney-client privilege assertion of
14 it.

15 So I am not going to be holding back on
16 proceeding with the discovery. My client needs to get
17 discovery going, and they need to get it going fast because
18 the one thing that we learned from the 26(a) disclosures is
19 that the majority of the information or a very significant
20 portion of the information that is critical to this case is
21 in the hands of third parties. QCM identified nine third
22 parties they said had relevant information. The dot.com
23 defendants identified 40 third parties that they said had
24 relevant information. I need to start issuing subpoenas to
25 those third parties. I need to get discovery requests out

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2 to them because they're under no preservation obligations
3 at all. Indeed, I need interrogatories because I don't
4 even know all the third parties that are at play right now.
5 QCM in their report said that they relied upon a group of
6 unnamed scientists. But when I read their 26(a)(1)
7 disclosure, they're not there. So now there are some
8 unnamed scientists that I still need to figure out who they
9 are. So delay from my end risks losing discovery from the
10 third parties that all the parties in their 26(a)(1)s said
11 were highly relevant. And there's no reason to do that
12 because I can't satisfy their burden element. They've got
13 six custodians. I have far more than I have to deal with.
14 I am taking on a bigger burden. They have six custodians.
15 That's it. That's not burdensome under any measure.

16 MR. BROMBERG: Can I be heard on that, your Honor?

17 THE COURT: Yes. I would love for you to be heard
18 on that.

19 MR. BROMBERG: So I'm not sure how Mr. Connolly
20 can say that discovery will not be burdensome here because
21 discovery will need to be taken not only from the six
22 defendants who are before your Honor today but from the
23 plaintiff, as to whom we expect there will be at least six,
24 probably twice as many employees who need to be deposed,
25 putting aside all of the document productions. And then,

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2 as Mr. Connolly mentioned, there are literally dozens of
3 third parties as to whom just documents will need to be
4 taken and discovery -- depositions will need to be taken.
5 And, in addition to all that, your Honor, there's
6 Dr. Markey, who still hasn't been served. And then not
7 only will there be the usual burdensome discovery of
8 electronically stored information, but all of this
9 information pertains to the subject matter of very complex
10 scientific studies and academic papers, which can only
11 vastly elevate the costs and burden of discovery, which
12 include, of course, expert discovery, should that become
13 necessary.

14 So that's what I have to say as to burden. Now,
15 as to the regulatory proceedings, first of all, as your
16 Honor noted, those regulatory proceedings are still
17 ongoing. As my able co-counsel has informed me, only on
18 the 28th of February Cassava filed its report stating that
19 those proceedings are ongoing. I've also been informed by
20 my co-counsel that the plaintiffs in the securities class
21 action ongoing in the Western District of Texas requested
22 documents from Cassava pertaining to the ongoing regulatory
23 and criminal proceedings, and Cassava opposed that request.
24 We would, of course, fully expect to make similar requests
25 to Cassava. To the extent that those regulatory and

1 PROCEEDINGS 30
2 criminal proceedings are still ongoing, it's not clear that
3 we'd be able to obtain the information that we're seeking
4 at this juncture, which --

5 THE COURT: Let me just stop you right there. You
6 said there's plaintiffs in a securities class action in the
7 Eastern District of Texas who sought documents, and Cassava
8 opposed those requests. They opposed them on the basis
9 that there were ongoing parallel proceedings or for some
10 other reason?

11 MR. BROMBERG: It's a Private Securities
12 Litigation Reform Act, PSLRA automatically stays discovery
13 in securities fraud cases until an MTD is decided, the
14 motion to dismiss is decided.

15 MR. CONNOLLY: Can I speak to that, your Honor?

16 THE COURT: Yes.

17 MR. CONNOLLY: So --

18 THE COURT: Are you -- do you represent Cassava in
19 the securities litigation?

20 MR. CONNOLLY: No, I do not, your Honor.

21 THE COURT: Okay, let's hear from Mr. Bromberg,
22 then.

23 MR. BROMBERG: The Court can take judicial notice
24 of Cassava's conduct in that securities class action. It's
25 in the Western District of Texas. And contrary to the

1 PROCEEDINGS 31

2 position they're taking here, Cassava opposed the
3 plaintiffs' motion for partial relief from the PSLRA
4 discovery stay. And I'll quote from their brief. They
5 say, "Here, plaintiffs have failed to show they will be
6 unduly prejudiced by having to wait just a few more months
7 to obtain the discovery at issue. After all, it is not as
8 though they will be obstructed from obtaining the discovery
9 forever, because the stay is temporary and lasts only
10 unless and until plaintiffs' Complaint survives the motion
11 to dismiss stage, when they will have access to all of the
12 discovery material they seek." That's 21-cv-751-DAA,
13 Western District of Texas, October 25th.

14 THE COURT: 21-cv-751?

15 MR. BROMBERG: 751-DAA, correct, your Honor. And
16 that's Docket 82. And based on that argument, the Court in
17 the Western District of Texas maintained the PSLRA
18 discovery stay, and we believe the same result should
19 obtain here. The Court should exercise its discretion to
20 impose a stay until such time as the motions to dismiss
21 have been adjudicated.

22 THE COURT: All right, let me hear again,
23 Mr. Connolly, about -- or Mr. Frey about the third parties
24 because if there is anything that I would be concerned
25 about if there's a stay entered, I would be concerned about

1 PROCEEDINGS 32
2 preservation by potential third parties, preservation
3 issues.

4 MR. CONNOLLY: I think there's two ways to
5 approach that, your Honor. I completely understand my
6 friend's argument regarding the concern about depositions
7 and the costs associated with the depositions. If the Court
8 wants to stay depositions, I would be amenable to that so
9 that we could focus on the documents --

10 THE COURT: Mr. Connolly, you're not answering my
11 question. My question was --

12 MR. CONNOLLY: And this is where I was going --

13 THE COURT: -- preservation issues with third
14 parties who may not be on notice of this lawsuit and a duty
15 to preserve.

16 MR. CONNOLLY: So I need to be able to serve
17 subpoenas to those third parties because that does start to
18 trigger the obligation to preserve.

19 THE COURT: I know.

20 MR. CONNOLLY: And I do need at least some
21 discovery --

22 THE COURT: Who are these third parties, and --
23 you don't have to identify them, but you have to explain to
24 me why these third parties matter and why these third
25 parties might not yet be on notice. I understand, I fully

1 PROCEEDINGS 33

2 get it, that a subpoena is for damn sure the start date,
3 but that doesn't mean that they are not already on notice
4 and could be, could have a duty to preserve already. So
5 I'm trying to parse that out, okay?

6 MR. CONNOLLY: Sure. The third parties are the
7 third parties that these defendants identified in their
8 Rule 26(a)(1) disclosure statements. These defendants --
9 I'll use the dot.com defendants as my example -- identified
10 40 third parties that they claimed had relevant knowledge.
11 They range from scientific journals to scientists to
12 individuals who have done some testing on our drug to other
13 individuals that they may or may not have been relying on
14 for their statements. And so when I think through the
15 third parties, there is a significant segment of them that
16 are being identified by these defendants in their Rule
17 26(a)(1) disclosures as individuals that they are telling
18 us have relevant knowledge.

19 THE COURT: Isn't that on them, then?

20 MR. CONNOLLY: No. I need that discovery because
21 they might be using that to support their actual malice.

22 THE COURT: Right. But if they're going to use
23 it to support their actual malice, then the documents exist
24 and are preserved.

25 MR. CONNOLLY: Not -- no. If these third parties

1 PROCEEDINGS 34
2 had oral communications with any of these witnesses and
3 these third parties have their own documents discussing
4 what they did or did not know, I have to have that
5 information. If you are relying on a third party as a
6 source --

7 THE COURT: Doesn't it only matter what the third
8 party told or provided to the defendants, which the
9 defendants presumably would have?

10 MR. CONNOLLY: No. Because the credibility of the
11 third party is the quintessential analysis of actual
12 malice. If the third party is not a reliable source which
13 I can establish with information in the possession of the
14 third party, then you cannot rely on them for actual malice
15 purposes. And in fact, what the case law says is your
16 reliance upon them undermines your credibility.

17 THE COURT: Let me hear from the defendants who
18 listed these third parties in their disclosures.

19 MR. KUMAGAI: Your Honor, Dave Kumagai for the
20 dot.com defendants. So we don't understand Cassava's
21 concern here. We actually understand that they've already
22 served preservation notices on third parties that they
23 believe to have relevant information, and so these are
24 people that we think may have relevant information in
25 support of our defenses. As Cassava's counsel noted,

1 PROCEEDINGS 35

2 they're scientists and --

3 THE COURT: Wait, wait, wait. Preservation
4 notices have already been served by you?

5 MR. CONNOLLY: No, your Honor. We sent to the 19
6 third parties that we listed, we told them we have a
7 lawsuit pending --

8 THE COURT: Okay. What about the third parties
9 disclosed by defendants?

10 MR. CONNOLLY: I have not sent anything to them
11 yet. Again, my letter doesn't have any binding authority,
12 of course, but I have not sent it to them yet.

13 THE COURT: Let me decide whether that has any
14 binding authority.

15 Let me hear from Mr. Kumagai. I mean, are the
16 third parties on your initial disclosures, are they
17 preserving documents? I mean, I don't understand. You're
18 saying that third parties on your initial disclosures have
19 already gotten preservation notices?

20 MR. KUMAGAI: Not from us, your Honor. We
21 understand from our clients that some third-party notices
22 have gone out. But we haven't sent notices yet to these
23 individuals.

24 THE COURT: Okay. You know what, first ruling of
25 the day. You're going to meet and confer and you're going

1 PROCEEDINGS 36

2 to figure out which third parties should get preservation
3 notices and who's going to send them, and you're going to
4 send them. Okay? This is for everybody. This is not just
5 for plaintiffs, this is just for defendants. Okay, you're
6 going to figure this out. But I don't see this as a reason
7 to have everybody engaging in wholesale discovery. All
8 right?

9 Was there anything, Mr. Connolly, or Mr. Frey,
10 that you didn't get to say about the discovery stay
11 otherwise that you would like to say? I'm not -- I told
12 you where I'm leaning. I'm not going to rule except to
13 temporarily stay any other discovery other than the meet
14 and confer on the preservation notices until I actually
15 issue a written order. Okay? I'm going to need to take
16 some time to think about this. I'm going to need to see
17 the transcript.

18 MR. CONNOLLY: Nothing further, your Honor.

19 THE COURT: Okay. Anything further that the
20 defendants would like to add that's not in their papers or
21 that's come up today that you would like to respond to?

22 MR. BROMBERG: Not from Quintessential, your
23 Honor.

24 MS. SPILLANE: No, your Honor.

25 MR. KUMAGAI: No, your Honor.

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2 THE COURT: All right, then, I am -- let me see if
3 the dates -- I'll enter a discovery end date for now, just
4 so that the docket system and all our internal systems
5 don't have a big headache about the discovery end date.
6 But because discovery is currently stayed for a short time
7 until I formally rule on the discovery stay -- and I've
8 already told you where I'm leaning -- that will probably
9 get pushed and will get extended, depending on when the
10 motion to dismiss is decided and how it's decided. Okay?
11 So I understand it's December of 2023, so let's not worry
12 about it right now.

13 Right now you are directed to meet and confer on
14 preservation notices that need to go out to third parties,
15 figure out all the third parties who need to get
16 preservation notices, make sure they go out. Okay? Work
17 together on that.

18 And then I think, because the motion to dismiss is
19 pending, the burden is on me -- usually I don't let you go
20 without another deadline that you have to follow -- but
21 since I have all the homework now, I think I just have to
22 go and do my homework. So can you resolve the third-party
23 preservation notices in the next two weeks and then just
24 file a joint status letter saying that you've resolved it?
25 Or, if you need more time, explain to me why you need more

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2 time.

3 And then if there is a final resolution that can
4 be disclosed of any of the regulatory or criminal
5 proceedings, don't assume I'm going to see it. Okay? I'll
6 put that on plaintiff's counsel to file a letter letting me
7 know if something has changed there. Okay? Otherwise,
8 silence will mean you can't say anything one way or the
9 other until you can. Okay? Because I think that might
10 also be helpful in understanding the motion to stay. I
11 mean, I don't think it will take that long; but in the
12 event something happens next week, for example, that would
13 be helpful.

14 MR. CONNOLLY: Sure.

15 THE COURT: Okay. Yes?

16 MR. KUMAGAI: Your Honor, sorry. Just to correct
17 one minor point, I believe plaintiff's counsel mentioned
18 that we had been retained to represent the defendant
19 Markey, who has not been served yet. We did have
20 discussions with him early on, but we have not been
21 formally retained. So I just wanted to correct that point.

22 THE COURT: All right, so Dr. Markey is currently
23 (indiscernible).

24 Okay, All right, anything else we need to do at
25 this time?

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MR. CONNOLLY: Not from the plaintiffs, your Honor.

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THE COURT: Okay. Defendants? Any

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MR. BROMBERG: No, your Honor.

6

THE COURT: All right -- oh, you know, one last thing, Case Management Plan, you had said you will discuss the possibility of settlement at the Rule 26(f) meet-and-confer. Is there anything you would like to talk about settlement-wise, either on the record, meaning you've decided and you want to do mediation or you might want to do something private or you're not ready; or is there anything you would like to discuss off the record, which I can also do?

15

MR. CONNOLLY: Not from the plaintiff's side?

16

MS. SPILLANE: No, your Honor.

17

THE COURT: Okay, anything off the record? Okay, we're going to close the record. I'm going to request the parties order a copy of the transcript. I understand there to be three groups of defendants, so I'm going to ask you to split the costs four ways. Okay?

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All right. Thank you very much.

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(Whereupon, the matter is recessed.)

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3 C E R T I F I C A T E

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5 I, Carole Ludwig, certify that the foregoing
6 transcript of proceedings in the case of Cassava Sciences,
7 Inc. v. Bredt et al, Docket #22-cv-09409-GHW-OTW, was
8 prepared using digital transcription software and is a true
9 and accurate record of the proceedings.

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Signature /s/Carole Ludwig

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Carole Ludwig

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Date: March 13, 2023

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